IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi – 110 066.

PRINCIPAL BENCH – COURT NO. II

Custom Appeal No. 53728 of 2018-DB

(Arising out of Order-in-Original No. 59/MK/CONFIRMATION/POLICY/2018 dated 23.10.2018 passed by Commissioner of Customs (Airport & General), New Delhi)

M/s Shubhra Logistics Appellant
Flat No. 908, 9th Floor,
Antriksh Green Apartment,
Plot No. GH-248, Kaushambhi,
Ghaziabad – 201010.

Vs.

Commissioner of Customs Respondent
(Airport And General)
New Customs House,
Near IGI Aipport,
New Delhi - 110037

Appearance :

Shri B.K. Singh, Advocate - for the appellant

Shri Rakesh Kumar, DR - for the respondent

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 50535/2019

Date of Hearing: 20/12/2019
Date of Decision: 16/04/2019

Per Bijay Kumar :

The present appeal has been filed by the appellant being aggrieved by the impugned order passed by Commissioner of Customs (Airport & General), New Customs House, New Delhi. In the impugned order, the Commissioner has confirmed the suspension of Customs Broker [Licence No. R-43/DEL/CUS/2012 (PAN:AGQPS5799A] valid up to 13.8.2022 for their having not fulfilled the trust imposed upon them under Regulation 10(a), 10(b), 10(d), 10(e) and 10(n) of Customs Broker Licensing Regulation, 2018 (erstwhile Regulation No.11(a), 11(b), 11(d), 11(e) and 11(n) of CBLR, 2013).

2. The brief facts of the case is that the appellant is a Customs Broker having a valid licence as stated above, issued by the Commissioner of Customs (I&G), New Delhi, under Regulation 9(1) of Customs House Agent Licensing Regulation (CHALR), 2004. The appellant has also been permitted to transact their business as Customs Broker in Mumbai-I, Customs Commissionerate under Regulation 9(2) of CHALR, 2004. During the course of their business as a Custom House Agent, the appellant has cleared the consignment of cold rolled and hot rolled stainless steel coils/sheets imported by one importer viz. M/s Mahaveer Impex, Mumbai (Import Export Code – 0313016283), by resorting to mis-declaration of description, weight and value of the goods by entering into conspiracy with Shri Jitendra Sumermal Sanghvi, indentor of overseas supplier for steel product and thus abetted in the evasion of Customs duty by the importer. For the said clearance of import consignment, the appellant had filed Bill of Entry No. 6747819 dated 13.9.2014, which was later found to be undervalued, which was detected by DRI and subsequently informed to Commissioner of Customs, for taking appropriate action against the appellant. It was found by the department,

during the investigation, that the appellant has connived with the importer in obtaining forged invoice, PMI test report regarding grade of import consignment of HR/CR coil through one of his authorised person viz. Shri Harshad Sakharam Nedekar, who also happened to be representative of another CHA M/s Greenity Logistics Pvt. Ltd. In her statement Ms Sheel Tripathi, proprietor of appellant accepted that she never met the proprietor of M/s Mahaveer Impex, the importer, and that too of her staff at Mumbai, viz. Shri Pramod Singh, Manager and Shri Vaibhav Satish Shellar, Customs clerk got the work from the importer, to the appellant and her. After the detailed investigation, the respondent - Commissioner issued Suspension Order on 28.9.2018 for violation of the regulations as stated above which was also confirmed by the impugned order, which is under challenge before us.

4. Learned Advocate, on behalf of the appellant, submits that there had been no breach of the provisions of CHALR, or CBLR as stated above in the impugned order to the effect that the appellant had obtained the due authorisation for carrying out the business of customs clearance from the importer and also did not fail to inform the Assistant Commissioner/Deputy Commissioner of Customs regarding any violation on account of the fact that they have filed all necessary documents after due diligence and verification. The appellant also verified the IEC code from DGFT site, goods and service tax identification number, identity of client and functioning of his client at the declared address by using reliable independent, authentic documents and available data on the DGFT website.

Therefore, all the charges levelled against the appellant is not correct.

4.1 The only ground for impugned order is on the basis of the statement recorded by Department from Ms. Tripathi, proprietor of the appellant, who has accepted the lapse committed by his representative working at their Mumbai office.

4.2 It is also submitted that Shri Nadekar never brought to the notice of the appellant about accepting additional sum for getting PMI test done from M/s Ananta Metal Testing Services. If it was done without knowledge of the appellant, their proprietor or other senior officer of the appellant the same was done under his personal capacity. The appellant is not responsible as the same. which has been done beyond the mandate given to Shri Nadekar as the authorised representative. It was also stated by learned Advocate that the case has been detected way back in the year 2014, when the Bill of entry as stated above has been filed on 13.9.2014. Suspension of CHA license, under the provision of CBLR, 2018, is mentioned at Regulation, 20(2), sub-Regulation (1), thereof, which is reproduced as under:

> **"20. Suspension or revocation of licence.-**
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> (1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :-
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> (a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

> (b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;
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> (c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.
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> (2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.
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> (3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent.

The purpose of this regulation is for the immediate suspension of the licence so as to stop the functioning at particular station due to irregularity committed by the CHA in discharge of their function under the provisions of CBLR. In this case, the suspension has been ordered after more than four years of the import and the same has been confirmed by the Commissioner in the impugned order. The appellant placed reliance on the decisions of Hon'ble High court in the case of **Commissioner of Custom Vs. National Shipping Agency –** 2008 (226) ELT 46 (Bom.) regarding power of suspension under Regulation 20(2) of CHALR, 2004 which is para meteria with CHALR, 2004 and CBLR, 2013.

4.3 Learned Advocate also relied upon the other decisions in favour of the appellant regarding confirmation of order of suspension of license of the appellant.

5. The learned Authorised Representative on behalf of the Department, supports the impugned order on the ground that the appellant has committed illegality and impropriety in not informing the mis-declaration, manipulation of test report by the importer for whom they have taken customs clearance work. It is on record that one of the authorised person viz. Shri Nadekar has not only concealed the fact from Assistant Commissioner/Deputy Commissioner of Customs but also assisted in getting the wrong PMI test report. The appellant being CHA is fully responsible for the act of his representative, while transacting the business in course of their employment, as a Custom House Agent by the importer/exporter. Not only that, the proprietor of the appellant has accepted the entire responsibility as held by the learned Commissioner in the impugned order. In view of above, there is nothing wrong in the impugned order which need to be affirmed in the present proceedings.

6. We have considered the rival submission and perused the case record.

7. We find that the appellant as a Custom House Agent has taken the business after due diligence and taking all the documents required for the customs clearance in their good faith, from the importer also verified the same and, therefore, not committed any breach of the provisions of Rule 10 of CBLR 2018/11 of CBLR, 2013 as indicated above. The manipulation of test report regarding the consignment imported by the importer through one of their representative was not within the knowledge of the appellant and hence the appellant cannot be held responsible for the same and

visited with any penalty for that. We also find that in this case the detection was done in the year 2014 and the licence has been placed under suspension and confirmation thereof in the year 2018 which is much after the occurrence of event. The provisions of immediate suspension of license is required to be resorted to in deserving cases so as to prohibit the functioning of Custom House Agent at particular station, so that he does not tampers with the documents during the investigation and also to prohibit the CHA from indulging in activities prejudicial to Revenue during the investigation. Needless to say, the suspension is required to be done immediately after the detection of case against the CHA for misdeed or any manipulation by the CHA, which is not the case in the present proceedings. We also find the decision of Bombay High Court in the case of **National Shipping Agency** (supra) is squarely applicable in this case. The relevant portion of order is reproduced as under:

> "2. The power of suspension is pursuant to the powers conferred under Regulation 20(2) of the CHALR, 2004. As we have noted in the earlier judgements, this is an emergent power to be used in those cases where it is required that the CHA license be immediately suspended. The very fact that alleged violation is of the year 2005, as the import had taken place in September, 2005 and order of suspension was issued on 30.10.2006 itself would indicate that that there is no emergency which required that the licence be suspended. The Tribunal has noted that it is always open to the appellants herein to take steps even after the order of the Tribunal dated 11.5.2007. It appears that no show cause notice has been issued to be respondents herein, till date.
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> Considering the above facts in our opinion, the question of law would not arise and consequently appeal dismissed. We make it clear that it will be open to the appellants to record independent findings irrespective of the questions noted in the order of the Tribunal."

The findings of Hon'ble High Court is thus applicable in the case at hand without any deviation.

8. In view of above, without going into the other contentions raised by the appellant, we hold that the impugned order is not sustainable and deserves to be set aside.

9. Accordingly, the impugned order is set aside.

(Pronounced in Court on 16.04.2019)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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